

TRUTH IN TAXATION - JUDGMENT LEVY

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Raymond W. Short

Wayne A. Harper  
Melvin R. Brown  
Greg J. Curtis  
Kevin S. Garn  
Evan L. Olsen  
Loraine T. Pace

Tammy J. Rowan  
Jack A. Seitz  
Glenn L. Way  
Eli H. Anderson  
Judy Ann Buffmire  
James R. Gowans

Karen W. Morgan  
David Ure  
Jeff Alexander  
Patrice M. Arent  
John E. Swallow

AN ACT RELATING TO PROPERTY TAXES; SETTING A MINIMUM AMOUNT FOR JUDGMENT LEVIES; ELIMINATING THE TRUTH IN TAXATION EXEMPTION FOR JUDGMENT LEVIES; SETTING FORTH NOTICE AND HEARING REQUIREMENTS FOR JUDGMENT LEVIES; MAKING TECHNICAL CHANGES; AND PROVIDING FOR RETROSPECTIVE OPERATION.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

59-2-924, as last amended by Chapters 322 and 418, Laws of Utah 1998

59-2-1328, as last amended by Chapter 309, Laws of Utah 1997

59-2-1330, as last amended by Chapter 2, Laws of Utah 1997, Second Special Session

ENACTS:

59-2-918.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 59-2-918.5 is enacted to read:

59-2-918.5. Hearings on judgment levies -- Advertisement.

(1) A taxing entity may not impose a judgment levy unless it first advertises its intention to do so and holds a public hearing in accordance with the requirements of this section.

(2) (a) The advertisement required by this section may be combined with the advertisement required by either Section 59-2-918 or Section 59-2-919.

(b) The advertisement shall be at least 1/8 of a page in size and shall meet the type, placement, and frequency requirements established under Section 59-2-919.

(c) (i) For taxing entities operating under a July 1 through June 30 fiscal year the public hearing shall be held at the same time as the hearing at which the annual budget is adopted.

(ii) For taxing entities operating under a January 1 through December 31 fiscal year:

(A) for judgments issued from June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted; and

(B) for judgments issued from December 16 through May 31, the public hearing shall be held at the same time as the hearing at which property tax levies are set.

(3) The advertisement shall specify the date, time, and location of the public hearing at which the levy will be considered and shall set forth the total judgment amount and the tax impact on an average residential and business property located within the taxing entity.

(4) If a final decision regarding the judgment levy is not made at the public hearing, the taxing entity shall announce at the public hearing the scheduled time and place for consideration and adoption of the judgment levy.

(5) The date, time, and place of public hearings required by Subsections 59-2-918.5(c)(i) and 59-2-918.5(c)(ii)(B) shall be included on the notice mailed to property owners pursuant to Subsection 59-2-919(4).

Section 2. Section **59-2-924** is amended to read:

**59-2-924. Report of valuation of property to county auditor and commission -- Transmittal by auditor to governing bodies -- Certified tax rate -- Adoption of tentative budget.**

(1) (a) Before June 1 of each year, the county assessor of each county shall deliver to the county auditor and the commission the following statements:

(i) a statement containing the aggregate valuation of all taxable property in each taxing entity; and

(ii) a statement containing the taxable value of any additional personal property estimated by the county assessor to be subject to taxation in the current year.

(b) The county auditor shall, on or before June 8, transmit to the governing body of each taxing entity:

- (i) the statements described in Subsections (1)(a)(i) and (ii);
- (ii) an estimate of the revenue from personal property;
- (iii) the certified tax rate; and
- (iv) all forms necessary to submit a tax levy request.

(2) (a) (i) The "certified tax rate" means a tax rate that will provide the same ad valorem property tax revenues for a taxing entity as were collected by that taxing entity for the prior year.

(ii) For purposes of this Subsection (2), "ad valorem property tax revenues" do not include:

- (A) collections from redemptions;
- (B) interest; and
- (C) penalties.

(iii) Except as provided in Subsection (2)(a)(iv), the certified tax rate shall be calculated by dividing the ad valorem property tax revenues collected for the prior year by the taxing entity by the taxable value established in accordance with Section 59-2-913.

(iv) The certified tax rates for the taxing entities described in this Subsection (2)(a)(iv) shall be calculated as follows:

(A) except as provided in Subsection (2)(a)(iv)(B), for new taxing entities the certified tax rate is zero;

(B) for each municipality incorporated on or after July 1, 1996, the certified tax rate is:

(I) in a county of the first, second, or third class, the levy imposed for municipal-type services under Sections 17-34-1 and 17-36-9; and

(II) in a county of the fourth, fifth, or sixth class, the levy imposed for general county purposes and such other levies imposed solely for the municipal-type services identified in Section 17-34-2 and Subsection 17-36-3(22);

(C) for debt service voted on by the public, the certified tax rate shall be the actual levy imposed by that section, except that the certified tax rates for the following levies shall be calculated in accordance with Section 59-2-913 and this section:

(I) school leeways provided for under Sections 11-2-7, 53A-16-110, 53A-17a-125, 53A-17a-127, 53A-17a-134, 53A-17a-143, 53A-17a-145, and 53A-21-103; and

(II) levies to pay for the costs of state legislative mandates or judicial or administrative orders under Section 59-2-906.3.

(v) A judgment levy imposed under Section 59-2-1328 or Section 59-2-1330 shall be established at that rate which is sufficient to generate only the revenue required to satisfy the known, unpaid judgments. The ad valorem property tax revenue generated by the judgment levy shall not be considered in establishing the taxing entity's aggregate certified tax rate.

(b) (i) For the purpose of calculating the certified tax rate, the county auditor shall use the taxable value of property on the assessment roll.

(ii) For purposes of Subsection (2)(b)(i), the taxable value of property on the assessment roll does not include new growth as defined in Subsection (2)(b)(iii).

(iii) "New growth" means:

(A) the difference between the increase in taxable value of the taxing entity from the previous calendar year to the current year; minus

(B) the amount of increase to locally assessed real property taxable values resulting from factoring, reappraisal, or any other adjustments.

(c) Beginning January 1, 1997, if a taxing entity receives increased revenues from uniform fees on tangible personal property under Section 59-2-404, 59-2-405, or 59-2-405.1 as a result of any county imposing a sales and use tax under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, the taxing entity shall decrease its certified tax rate to offset the increased revenues.

(d) (i) Beginning July 1, 1997, if a county has imposed a sales and use tax under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, the county's certified tax rate shall be:

(A) decreased on a one-time basis by the amount of the estimated sales tax revenue to be distributed to the county under Subsection 59-12-1102(3); and

(B) increased by the amount necessary to offset the county's reduction in revenue from uniform fees on tangible personal property under Section 59-2-404, 59-2-405, or 59-2-405.1 as a result of the decrease in the certified tax rate under Subsection (2)(d)(i)(A).

(ii) The commission shall determine estimates of sales tax distributions for purposes of Subsection (2)(d)(i).

(e) For the calendar year beginning on January 1, 1998, and ending December 31, 1998, a taxing entity's certified tax rate shall be increased by the amount necessary to offset the decrease in revenues from uniform fees on tangible personal property under Section 59-2-405 as a result of the decrease in uniform fees on tangible personal property under Section 59-2-405 enacted by the Legislature during the 1997 Annual General Session.

(f) Beginning January 1, 1998, if a municipality has imposed an additional resort communities sales tax under Section 59-12-402, the municipality's certified tax rate shall be decreased on a one-time basis by the amount necessary to offset the first 12 months of estimated revenue from the additional resort communities sales tax imposed under Section 59-12-402.

(g) For the calendar year beginning on January 1, 1999, and ending on December 31, 1999, a taxing entity's certified tax rate shall be adjusted by the amount necessary to offset the adjustment in revenues from uniform fees on tangible personal property under Section 59-2-405.1 as a result of the adjustment in uniform fees on tangible personal property under Section 59-2-405.1 enacted by the Legislature during the 1998 Annual General Session.

(3) (a) On or before June 22, each taxing entity shall annually adopt a tentative budget.

(b) If the taxing entity intends to exceed the certified tax rate, it shall notify the county auditor of:

(i) its intent to exceed the certified tax rate; and

(ii) the amount by which it proposes to exceed the certified tax rate.

(c) The county auditor shall notify all property owners of any intent to exceed the certified tax rate in accordance with Subsection 59-2-919(2).

(4) (a) The taxable value for the base year under Subsection 17A-2-1247(2)(a) or 17A-2-1202(2), as the case may be, shall be reduced for any year to the extent necessary to provide a redevelopment agency established under Title 17A, Chapter 2, Part 12, Utah Neighborhood Development Act, with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate if:

(i) in that year there is a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i);

(ii) the amount of the decrease is more than 20% of the county's certified tax rate of the

previous year; and

(iii) the decrease results in a reduction of the amount to be paid to the agency under Section 17A-2-1247 or 17A-2-1247.5.

(b) The taxable value of the base year under Subsection 17A-2-1247(2)(a) or 17A-2-1202(2), as the case may be, shall be increased in any year to the extent necessary to provide a redevelopment agency with approximately the same amount of money as the agency would have received without an increase in the certified tax rate that year if:

(i) in that year the taxable value for the base year under Subsection 17A-2-1247(2) or 17A-2-1202(2) is reduced due to a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i); and

(ii) The certified tax rate of a city, school district, or special district increases independent of the adjustment to the taxable value of the base year.

(c) Notwithstanding a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i), the amount of money allocated and, when collected, paid each year to a redevelopment agency established under Title 17A, Chapter 2, Part 12, Utah Neighborhood Development Act, for the payment of bonds or other contract indebtedness, but not for administrative costs, may not be less than that amount would have been without a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i).

(5) (a) Except as provided in Subsections (5)(d) through (f), for the calendar year beginning on January 1, 1998, and ending December 31, 1998, to impose a tax rate that exceeds the certified tax rate established in Subsection (2), a taxing entity shall obtain approval for the tax increase by a majority vote of the:

(i) governing body; and

(ii) people as provided in Subsection (5)(b).

(b) To obtain voter approval for a tax increase under Subsection (5)(a), a taxing entity shall:

(i) hold an election on the fourth Tuesday in June; and

(ii) conduct the election according to the procedures and requirements of Title 20A, Election Code, governing local elections.

(c) A tax rate imposed by a taxing entity under this Subsection (5) may not exceed the maximum levy permitted by law under Section 59-2-908.

(d) Notwithstanding Subsection (5)(a), a school district is not required to obtain voter approval under this Subsection (5) to impose a tax rate that exceeds the certified tax rate:

(i) under Section 53A-17a-135, if the Legislature increases the minimum basic tax rate under Section 53A-17a-135;

(ii) under Section 53A-21-103;

(iii) under Section 53A-16-111;

(iv) if, on or after January 1, 1997, but on or before December 31, 1997, the school district obtained voter approval to impose the tax rate; or

(v) if, on or after January 1, 1998, the school district obtains voter approval to impose the tax rate under a statutory provision, other than the provisions of this section, requiring voter approval to impose the tax rate.

(e) Notwithstanding Subsection (5)(a), a municipality is not required to obtain voter approval under this Subsection (5) to impose a tax rate that exceeds the certified tax rate if:

(i) the municipality meets the requirements of Sections 59-2-918 and 59-2-919; and

(ii) in adopting the resolution required under Section 59-2-919, the municipal legislative body obtains approval to impose the tax rate by two-thirds of all members of the municipal legislative body.

(f) Notwithstanding Subsection (5)(a), a county or municipality is not required to obtain voter approval under this Subsection (5) to impose a tax rate under Section 17A-2-1322 that exceeds the certified tax rate calculated for a special service district established under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, if the county or municipality obtained voter approval to impose a tax on property within the special service district:

(i) under Section 17A-2-1322; and

(ii) on or after June 1, 1996.

Section 3. Section **59-2-1328** is amended to read:

**59-2-1328. Payment under protest -- Judgment for recovery -- Payment -- Tax levy.**

(1) (a) If it is determined in any action that a tax, or any portion of the tax, paid under protest, was unlawfully collected, a judgment for recovery of the tax plus interest as provided by law, together with costs of action, shall be entered in favor of the taxpayer.

(b) Upon being presented a duly authenticated copy of the judgment, the proper officer or officers of the state, county, or municipality whose officers collected or received the tax shall audit and allow the judgment, and cause a warrant to be drawn for the amount recovered by the judgment.

(c) If the judgment is obtained against a county, and any portion of the taxes included in the judgment are state, district, school, or other taxes levied by a taxing entity which have been or may be paid over to the state or to any school district or other taxing entity by the county, the proper officer or officers of the state, school district, or other taxing entity shall, upon demand by the county, cause a warrant to be drawn upon the treasurer of the state, school district, or other taxing entity in favor of the county for the amount of the taxes received, together with interest as provided by law and an equitable portion of the costs of the action.

(2) (a) Each taxing entity may levy a tax to pay its share of the judgment under Subsection (1).

(b) This levy is in addition to, and exempt from, the maximum levy established for the taxing entity [and is exempt from the requirements of Sections 59-2-918 and 59-2-919].

(c) No taxing entity may impose a judgment levy under this section if the amount of the judgment is less than the smaller of:

(i) \$1000; or

(ii) 1% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year.

Section 4. Section **59-2-1330** is amended to read:

**59-2-1330. Payment of property taxes -- Unlawful collection by county -- Liability of state or taxing entity -- Disputed taxes.**

(1) Unless otherwise specifically provided by statute, property taxes shall be paid directly to the county assessor or the treasurer when due.

(2) If the commission or a court of competent jurisdiction orders a reduction in the amount



of any tax levied against any property for tax purposes, the taxpayer shall be reimbursed under Subsection (3).

(3) (a) The state and any taxing entity which has received property taxes or any portion of property taxes is liable to a judgment debtor for the amount the state or the taxing entity received plus interest as provided in Subsection (3)(b) if:

(i) the taxes are collected by the authorized officer of any county;

(ii) a taxpayer obtains a judgment or final order from the county board of equalization or the commission against the county or an authorized officer of the county establishing that the taxes have been unlawfully collected; and

(iii) any portion of the taxes has been paid to the state or to any taxing entity by the county or its authorized officer.

(b) Interest under Subsection (3)(a) shall accrue:

(i) at a rate equal to the rate earned by the county;

(ii) (A) on the amount of taxes received from the time the state or a taxing entity received the taxes; and

(B) for an equitable portion of the costs of action.

(4) (a) Each taxing entity may levy a tax to pay its share of the judgment or final order under Subsection (3) if:

(i) the judgment or final order is issued no later than 15 days prior to the date the levy is set under Subsection 59-2-924(2)(a); and

(ii) the amount of the judgment levy is included on the notice under Section 59-2-919.

(b) The levy under Subsection (4)(a) is ~~is~~ in addition to, and exempt from, the maximum levy established for the taxing entity ~~and~~.

~~[(ii) exempt from the requirements of Sections 59-2-918 and 59-2-919 except for Subsection 59-2-919(4).]~~

(c) No taxing entity may impose a judgment levy under this section if the amount of the judgment is less than the smaller of:

(i) \$1000; or

(ii) 1% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year.

(5) (a) An owner of property assessed by the commission that has filed a valuation protest pursuant to Section 59-2-1007 and has not received a final decision on that protest shall pay, on or before the date of delinquency, the full amount of taxes due.

(b) A property owner that pays the full amount of taxes due under Subsection (5)(a) is not required to pay penalties or interest on a disputed tax unless:

(i) a final decision is entered establishing a value greater than the value stated on the disclosure notice under Section 59-2-1317; and

(ii) the property owner fails to pay the additional tax liability within a 45-day period after the county bills the property owner for the additional tax.

**Section 5. Retrospective operation.**

This act has retrospective operation to January 1, 1999.